

### **Remarks**

Claims 1-25 are pending in the application. Claims 1-8 are rejected, claims 9 and 10 are objected to, claims 11-18 are allowed, claim 19 is unexamined, and claims 20-25 are withdrawn from consideration. Based on the following, reconsideration of claims 1-8, and examination of claim 19, are requested.

### **Election/Restrictions**

Applicants hereby affirm the provisional election of Group I, claims 1-18, for prosecution. Applicants do not traverse the restriction of Groups III and IV, claims 20-24 and claim 25, respectively. Applicants do, however, traverse the restriction of Group II, claim 19, and for the reasons set forth below, request examination of claim 19.

First, claim 19 is not related as combination and subcombination to claims 1-18. Rather, each of claims 1-19 is directed to an air intake for a vehicle. Using claim 1 as an exemplary claim from Group I, and comparing it to claim 19, it is seen that claims 1 and 19 define the same essential characteristic of a single disclosed embodiment—e.g., the embodiment shown in Figures 1-3. Thus, according to MPEP, restriction should not be required. MPEP § 806.03, 8<sup>th</sup> ed., Rev. 1. Of course, the embodiment shown in Figures 1-3 is used only as an example, and does not imply that claims 1 and 19 are limited to the embodiment shown in Figures 1-3. Accordingly, examination of claim 19 is respectfully requested.

### **Claim Rejections—35 U.S.C. § 102**

The Examiner rejected claims 1-4, 7 and 8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,127,971 (Graebner). The MPEP states that "'a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.'" MPEP § 2131, 8<sup>th</sup> ed., Rev. 1.

(citation omitted). The MPEP further states that "'the identical invention must be shown in as complete detail as is contained in the claim.'" *Id.* (citation omitted). Because claims 1-4, 7 and 8 each contain elements which are neither expressly nor inherently described in Graebner, it is submitted that none of these claims is anticipated by that reference.

Claim 1 of the present application recites a housing having an inlet and an outlet, and further recites "a first dam disposed within the housing adjacent the inlet for preventing upward fluid flow from the inlet directly to the outlet...." Claim 1 also recites that the inlet is "for receiving air from the ambient environment...." No such elements are expressly or inherently described in Graebner. At the outset, it is noted that each of the sectional figures shown in Graebner—i.e., Figures 2-4 and 6-7—are oriented so that the air intake, opening to the ambient environment, is on the left side of the figure, while the outlet leading into the vehicle interior is on the right side of the figure. Therefore, Figure 2, which illustrates air exiting the vehicle, is not applicable to claim 1 of the present application. Even if it were, however, it does not anticipate claim 1.

As clearly shown in Figure 3 by the directional arrows, air enters the "downwardly opening vent 12," passes through the door and along a finish molding 16, which "is provided with an upturned lip 16a which deflects air drawn in through the rearward portion of the slot in an upward direction toward the roof of the interior of the car." (Page 2, Col. 1, ll. 3-7.) Even if a portion of the structure shown in Figure 3 could reasonably be called a "housing", there is no dam disposed within the structure that prevents upward fluid flow from the inlet to the outlet. Even the downwardly bent continuous flange 14 is not a "dam... for preventing upward fluid flow," since it contains "a plurality of elongated openings 15," (page 1, col. 2, ll. 47-51), and Figure 3 clearly shows fluid passing through it. Indeed, the specification of Graebner is very clear that the air entering the vehicle is specifically directed in an upward direction toward the roof of the interior of the car.

Examining the alternative embodiment described in Graebner, and shown in Figures 5-7, yields the same result. First, even if a portion of the structure shown in the

sectional views in Figures 6 and 7 could reasonably be called a housing, there is no dam disposed within that structure for preventing upward fluid flow from the inlet to the outlet. In fact, as shown in Figure 7, and clearly described on page 2, "rear portion of the lower rail 30 is provided with a baffle 32 serving to deflect air upwardly toward the upper portion of the interior of the car." (Page 2, Col. 1, ll. 74-75, Col. 2, ll. 1.) Thus, claim 1 of the present application contains elements which are neither expressly nor inherently described in Graebner. Further, Graebner does not show the identical invention in as complete detail as is contained in claim 1. Therefore, with regard to claim 1, the MPEP definition of anticipation is not met.

Claim 1 is the base claim for claims 2-4, 7 and 8. Each of these dependent claims contains all of the limitations of claim 1, as well as additional limitations which further distinguish it from the cited reference. For example, claim 7 recites "a second dam disposed within the housing adjacent the inlet and the first dam, and configured to cooperate with the first dam to direct at least some fluid flow from the inlet in a generally downward direction." As noted above, Graebner does not describe a first dam, and therefore, cannot describe a second dam that cooperates with the first dam. Applicants note that element 12 shown in Figures 2 and 3 in Graebner is labeled a "downwardly opening vent [ ]." (Page 1, Col. 2, l. 41.) As clearly shown in Figure 3, the vent 12 is where ambient air from outside the vehicle enters (which roughly corresponds to the "inlet" of claim 1) on its way upward toward the roof of the vehicle interior. Thus, element 12 shown in Graebner does not constitute a second dam, as specifically recited in claim 7 of the present application. Moreover, claim 8 recites that "the first and second dams cooperate to force at least some fluid flow from the inlet in a generally u-shaped flow path toward the outlet." No such elements are expressly or inherently described in Graebner. Therefore, with regard to claims 2-4, 7 and 8, the MPEP definition of anticipation is not met.

### **Claim Rejections—35 U.S.C. § 103**

The Examiner rejected claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Graebner in view of U.S. Patent No. 4,864,920 (Inagaki). The MPEP states

that in order to establish *prima facie* obviousness, all of the claim limitations of an invention must be taught or suggested by the prior art. MPEP § 2143.03, 8<sup>th</sup> ed., Rev. 1. As discussed above, claim 1 of the present application contains elements that are neither expressly nor inherently described in Graebner. Similarly, Graebner does not teach or suggest all of the claim limitations of claim 1. For example, Graebner does not teach or suggest a dam disposed within a housing for preventing upward fluid flow from an inlet directly to the outlet. Indeed, Graebner teaches a structure that is specifically designed to direct airflow upward as it enters from the ambient environment and moves into the vehicle. Thus, Graebner teaches away from claim 1 of the present application.

Even if Graebner is combined with Inagaki, claim 1 still contains limitations which are neither taught nor suggested by the references. Inagaki does not teach the dam recited in claim 1, and as noted above, Graebner teaches away from such a dam. Thus, even if Inagaki taught such a dam, there would be no suggestion or motivation to combine it with Graebner, because such a modification to Graebner would render the Graebner device unsatisfactory for its intended purpose—i.e., moving air upward from outside the vehicle into the vehicle interior. Thus, claim 1 of the present application is not obvious in light of Graebner or Inagaki, either alone or in combination.

Claim 1 is the base claim for claims 5 and 6. Each of these dependent claims contains all of the limitations of claim 1, as well as additional limitations which further distinguish it from the cited references. For example, claim 5 recites a plurality of vanes, and claim 6 recites that "at least some of the vanes are configured to direct fluid flow from the inlet into the housing in a generally downward direction." As shown in Figures 16 and 17, the Inagaki device includes ventilating holes 6 which "are partially covered with outwardly swelled portions 7." (Col. 5, ll. 47-48.) Nothing in the text of the specification in Inagaki, or in the drawing figures, teaches or suggests vanes that are configured to direct fluid flow from the inlet into a housing in a generally downward direction, as is specifically recited in claim 6. Because claims 5 and 6 contain all of the limitations of claim 1, which itself is nonobvious over the cited references, and because claims 5 and 6 contain additional limitations which further

distinguish them from the cited references, the MPEP requirements for *prima facie* obviousness for claims 5 and 6 are not met.

**Allowable Subject Matter**

The Examiner objected to claims 9 and 10 as being dependent upon a rejected base claim, but indicated that they would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 1 is the base claim for claims 9 and 10, and as discussed above, is believed to be patentable over the cited references. Therefore, Applicants request the objections to claims 9 and 10 be withdrawn. Applicants thank the Examiner for the allowance of claims 11-18.

Based on the foregoing, allowance of each of the pending claims is requested.

Respectfully submitted,  
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